

# Tennessee Tax Update

*Chattanooga Tax Practitioner's Meeting  
December 13, 2023*

# TENNESSEE WORKS TAX ACT

## Business Tax

- Increase from \$10,000 to \$100,000 minimum level of taxable sales for Business Tax purposes
- Effective after 12/31/2023
- No return required up to \$100,000
  - ✓ Taxpayer based in Nashville with \$150,000 sales in Davidson County
    - ❖ \$40,000 in Williamson County
    - ❖ \$75,000 in Wilson County
    - ❖ \$90,000 in Sumner County
  - ✓ Only return required in Davidson County for \$150,000

# TENNESSEE WORKS TAX ACT, *continued*

## Excise and Franchise Tax

- Allows bonus depreciation in computing net earnings or net loss
- Family medical leave credit allowed per IRS Credit of Section 455
  - ✓ Tax Years ending after 12/31/2023 and before 12/31/2025
  - ✓ Credit limited to 50% of Franchise & Excise Tax
  - ✓ Unused allowed carryover for twenty-five (25) years

# TENNESSEE WORKS TAX ACT, *continued*

## Excise and Franchise Tax, *continued*

- Transition to Mandatory Single Sales Apportionment Factor
  - ✓ Current = Property + Payroll + 3x Sales Divided by 5
  - ✓ Manufacturer's have had this Single Sales Factor since 2017
  - ✓ Single Sales Factor (SSF) **Mandatory** for all taxpayers for Excise Tax for years after 12/31/2025
  
- Transition of Single Sales Factor
  - ✓ Tax Year 2024
    - ❖ Property Factor + Payroll Factor + 5x Sales Factor Divided by 7
  - ✓ Tax Year 2025
    - ❖ Property Factor + Payroll Factor + 11x Sales Factor Divided by 13

# TENNESSEE WORKS TAX ACT, *continued*

## Excise and Franchise Tax, *continued*

### ➤ Exceptions – Excise Tax

- ✓ If during transition period or thereafter Single Sales Factor
  - ❖ Results in lower apportionment ratio than under-apportionment method prior for years 12/31/2023
  - ❖ Taxpayer may annually elect to use apportionment method used for years prior to 12/31/2023
  - ❖ Such election must result in higher apportionment factor for the tax year and taxpayer must have net earnings rather than a loss

### ➤ Exceptions – Franchise Tax

- ✓ Same exception as above for Excise Tax
- ✓ NOTE: The minimum Franchise Tax remains at \$100
- ✓ Unused Jobs Tax Credits carried forward for twenty-five (25) years vs. fifteen (15) years

# TENNESSEE WORKS TAX ACT, *continued*

## Excise and Franchise Tax, *continued*

### ➤ Minimum Franchise Tax Value

- ✓ Franchise Tax calculation determined by tax rate x net worth
- ✓ However, in no case shall net worth measure be less than alternative measure
  - ❖ Actual value of real or tangible personal property owned or used in Tennessee
  - ❖ If method used is below threshold, the \$100 minimum kicks in and a return must be filed

# TENNESSEE WORKS TAX ACT, *continued*

## Sales and Use Taxes

- 2023 Sales Tax Holiday for food purchases
  - ✓ Sale of food and food ingredients exempt from Sales Tax between August 1, 2023, and October 31, 2023
  - ✓ Exemption does not apply to sales from micro market or from vending machine
  - ✓ Certain exemption for certain magazines and books where distribution has limited activities in Tennessee is deleted
  - ✓ Cooperative direct mail exemption is deleted

# TENNESSEE WORKS TAX ACT, *continued*

## Franchise and Excise Jobs Tax Related Credits

- Where the carryover currently states fifteen (15) years, for years ending after 12/31/2008 may be carried forward for twenty-five (25) years



# TENNESSEE WORKS TAX ACT, *continued*

## Maximum Measure Franchise Tax Base T.C.A. 67-4-2108

- No less than actual value of real or personal property owned or used in Tennessee, excluding exempt inventory and exempt required capital
- NOTE: ACTUAL VALUE
- Tax years ending on or after 12/31/2024
- In excess of \$500,000

# TENNESSEE WORKS TAX ACT, *continued*

## Manufacturer's Exemption

- Expanded from manufacturers site to tangible personal property also sold for resale from storage or warehouse facility within ten (10) mile radius of manufacturer's location
- Reduced rate for Class 5 taxpayer from 3/10 of 1% to 1/10 of 1% (Industrial Loan and Thrift companies)

*TENNESSEE WORKS TAX ACT, continued*

# Tennessee Department of Letter Ruling #23-08

Issued August 24, 2023

# TDR Letter Ruling #23-08, *continued*

## Subject

- Wholly owned Single Member LLC qualifies for sales and use tax exemption, industrial machinery exemption and business tax exemption for manufacturers if it elects to be treated as a corporation for federal income tax purposes

## Facts

- Parent is Tennessee corporation headquartered in Tennessee
- Parent is in business of selling fabricated goods to other contractors and customers
- Parent is expanding operation
- Parent currently leases property that consists of parent contractor's corporate office, a physically separate fabrication facility, and two support buildings

# TDR Letter Ruling #23-08, *continued*

## Facts, *continued*

- Parent established a new legal entity
- Parent will transfer all machinery, equipment and personnel involved in fabrication to the new entity
- Property will be resurveyed containing a part separate from corporate headquarters with a separate address
- New entity will enter into new agreement with property owner to lease the part it will maintain in fabrication operations
- Parent will enter into agreement with property owner with a distinct property location with an entrance separate from current address to lease the remainder of the property where it will maintain its contractor operations

# TDR Letter Ruling #23-08, *continued*

## Facts, *continued*

- New company formed under Tennessee Law as Single Member LLC wholly owned by Parent but treated as corporation for federal income tax purposes
- New entity will only fabricate goods for resale and use off the premises
- There will be no installation services from this entity
- At least fifty-one percent (51%) of new entity's gross sales will be from sale of goods at the new fabrication location
- Fabricated goods will be sold to Parent and third parties
- Title and possession of fabricated goods will be passed from new entity to customer at the job site to which it is shipped

# TDR Letter Ruling #23-08, *continued*

## Ruling

- 1. Will taxpayer qualify for sales and use tax exemption for industrial machinery and reduced rates for energy?
  - ✓ Yes, taxpayer will be treated as separate entity from Parent and will qualify for sales and use tax exemption for industrial machinery and reduced energy rates
  
- 2. Does answer change if taxpayer does not elect to be treated as a corporation and remains a disregarded entity for federal tax purposes?
  - ✓ Yes, the answer changes
  - ✓ Taxpayer would be disregarded for Tennessee sales and use tax purposes and treated as a Division of Parent
  - ✓ Would not be able to sell to Parent as sales to third parties would be that of Parent
  - ✓ Parent's eligibility may fluctuate based on where it derives most of its revenues

# TDR Letter Ruling #23-08, *continued*

## Ruling, *continued*

- 3. If Parent moved its manufacturing operation to separate location and did not create a separate, new entity, would Parent qualify for industrial machinery exemption as manufacturer at the new fabrication location?
  - ✓ Maybe; Parent's eligibility for industrial machinery exemption would fluctuate based on where it derives most of its revenue
  
- 4. Will new entity qualify as manufacturer for business tax purposes?
  - ✓ Yes, taxpayer who elected to be treated as corporation for federal tax purposes will qualify as manufacturer for business tax purposes because it is primarily engaged in fabrication of goods for resale and consumption off the premises



# TENNESSEE WORKS TAX ACT, *continued*

## Expected Topics Upcoming – Legislative Session

### ➤ Gun Control

- ✓ Registration
- ✓ Dangerous and/or mentally ill individual ownership

### ➤ Education

- ✓ School Vouchers - \$7,000 for student – how will this be funded?
- ✓ Charter Schools
- ✓ County controlled

# TENNESSEE WORKS TAX ACT, *continued*

## Expected Topics Upcoming – Legislative Session, *continued*

### ➤ Taxes

- ✓ POA register and recognize
- ✓ Proposed Assessment
  - ❖ When is Assessment made?
  - ❖ History
  - ❖ Assessment vs. Final Assessment
  - ❖ Impact on ninety (90) days to file suit – current legal case
- ✓ Tax Period Records
  - ❖ Examine once unless State can prove fraud or jeopardy

# TENNESSEE WORKS TAX ACT, *continued*

## Expected Topics Upcoming – Legislative Session, *continued*

### ➤ Taxes, *continued*

#### ✓ Informal Conference

- ❖ Outside Department of Revenue
- ❖ Fixed time period to issue Conference Letter
  - One (1) year over two (2) years
  - One (1) year over thirty-five (35) months
- ❖ Statute of Limitations
  - Do Proposed Assessments extend Statutes if issued before three (3) years?
- ❖ Aggressive Collection Action

# Thank You

➤ Questions?

➤ Comments?

# Contact Information

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